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## **An Act To Establish Consistent Consumer Protections for Cable and Video Programming Customers**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this legislation needs to take effect before the expiration of the 90-day period in order to be in place before action is taken on the federal level; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 30-A MRSA §3008,** as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

### **§ 3008. Ordinances relating to cable television and video services**

**1. State policy.** It is the policy of this State, with respect to cable television and video services:

A. To affirm the importance of municipal control of franchising and regulation in order to ensure that the needs and interests of local citizens are adequately met;

B. That each municipality, when acting to displace competition with regulation in the area of cable television and video services, shall proceed according to the judgment of the municipal officers as to the type and degree of regulatory activity considered to be in the best interests of its citizens; and

C. To provide adequate statutory authority to municipalities to make franchising and regulatory decisions to implement this policy and to avoid the costs and uncertainty of lawsuits challenging that authority; and

D. To ensure that video service providers using a telecommunications platform receive the same treatment with respect to franchising and regulatory processes as is available to cable television systems and to encourage new providers to provide competitive pressure on the pricing of such services.

**2. Ordinances.** A municipality may enact any ordinances, not contrary to this chapter, governing franchising and regulation of cable television systems and video services using public ways. Systems located in accordance with those ordinances, franchises and regulations are not defects in public ways.

The municipal officers of municipalities have the exclusive power to enact all ordinances authorized by this section. They shall give 7 days' notice of the meeting at which those ordinances are to be proposed in the manner provided for town meetings. Those ordinances take effect immediately.

**3. General requirements.** The following requirements apply generally to cable television systems and video service providers governed by this section.

A. Any cable television system must be constructed and operated in accordance with Federal Communications Commission regulations.

B. Notwithstanding any provision in a franchise, ~~no~~ cable television company or video service provider may not abandon service or a portion of that service without having given 6 months' prior written notice to the franchising municipality, if any, and to the municipalities affected by that abandonment. When abandonment of any service is prohibited by a municipal franchise, ~~no~~ cable television company or video service provider may not abandon that service without written consent of the municipal officers. Any cable television company ~~which~~ or video service provider that violates this paragraph commits a civil violation for which a fine of \$50 a day for each day that the violation continues may be adjudged.

C. Neither the cable television company or video service provider whose facilities are used to transmit a program produced by a person other than ~~the cable television that~~ company or provider, under Federal Communications Commission regulations or municipal ordinance, nor the officers, directors or employees of any such cable television company or video service provider are liable for damages arising from any obscene or defamatory statements or actions or invasion of privacy occurring during any program when that company or provider does not originate or produce the program.

~~D. Notwithstanding any other provisions of this chapter, any permit to provide a cable television system issued before July 1, 1965, without a fixed termination date, is deemed to expire on September 18, 1996, unless an earlier expiration date is mutually agreed upon by the municipality and the permit holder. These cable television systems, as a condition of franchise, shall be operated in such a manner as to provide a safe, adequate and reliable service to subscribers.~~

E. A municipality is entitled to collect reasonable attorney's fees if successful in any enforcement action and to seek injunctive relief in addition to any other remedies available by law to protect any rights conferred upon the municipality by this section or any ordinances or rules enacted under this section or section 3010.

**4. Franchise procedures.** Pursuant to subsection 2, a municipality may enact ordinances governing the procedures for granting franchises to cable television franchises companies and video service providers. These ordinances must be enacted before granting any such franchise or franchises and ~~shall~~ must be designed to ensure that the terms and conditions of a franchise will adequately protect the needs and interests of the municipality. The ordinances ~~shall~~ must include, but are not limited to, provisions for the following:

- A. A mechanism for determining special local needs or interests before issuing a request for proposals, whether by actively seeking to determine those needs or interests or by allowing a period for public comment on a proposed request for proposals;
- B. The filing of franchise applications and related documents as public records, with reasonable notice to the public that the records are open to inspection during reasonable hours;
- C. A reasonable opportunity for public input before granting franchises; and
- D. The assessment of reasonable fees to defray the costs of public notice, advertising and other expenses incurred by the municipality in acting upon applications.

**5. Franchise agreements or contracts.** The State specifically authorizes municipal officers pursuant to ordinances to contract on such terms and conditions and impose such fees as are in the best interests of the municipality, including the grant of exclusive or nonexclusive franchises for a period not to exceed 15 years, for the placing and maintenance of cable television systems or video service systems and appurtenances, or parts thereof, along public ways and including contracts with cable television companies whichever video service providers that receive the services of television signal transmission offered by any public utilities using public ways for such transmission. ~~No~~A public utility may not be required to contract with the municipal officers under this subsection. Each franchise must contain the following provisions:

- A. The area or areas to be served;
- B. A line extension policy;
- C. A provision for renewal, the term of which may not exceed 15 years;
- D. Procedures for the investigation and resolution of complaints by the cable television company or video service provider; and
- E. Any other terms and conditions that are in the best interests of the municipality.

~~**6. Current ordinances and agreements.** This section shall not be construed to invalidate any ordinance, franchise or agreement in effect or under consideration on July 25, 1984.~~

**7. Model franchise agreement.** The Public Utilities Commission shall adopt by rule a model franchise agreement for use by any municipality that chooses to adopt its provisions. This subsection does not allow the commission to establish prices for any cable television or video service or to regulate the content of cable television or video service. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**Sec. 2. 30-A MRS §3010**, as amended by PL 2007, c. 104, §1, is further amended to read:

**§ 3010. Consumer rights and protection**

Every franchisee shall agree to the following.

**1. Credits and refunds for interruption of service.** Credits and refunds for interruption of service ~~shall~~must be as follows.

- A. In the event service to any subscriber is interrupted for 6 or more consecutive hours in a 30-day period, it will, upon request, grant that subscriber a pro rata credit or rebate.
- B. An office ~~shall~~must be open during usual business hours, have a listed toll-free telephone and be capable of receiving complaints, requests for adjustments and service calls.
- C. The franchisee shall provide subscribers with 30 ~~days~~days' advance written notice of an increase in rates, changes in billing practices or the deletion of a channel.

**1-A. Service disconnection.** A franchisee must discontinue billing a consumer for a service within 10 working days after the consumer requests that service disconnection unless the consumer unreasonably hinders access by the franchisee to equipment of the franchisee on the premises of the consumer to which the franchisee must have access to complete the requested disconnection.

**2. Notice to subscribers regarding quality of service.** Notice to subscribers regarding quality of service ~~shall~~must be as follows.

A. For each new subscriber, and annually thereafter, every franchisee shall cause to be mailed to each of its subscribers a notice that:

(1) Informs subscribers of how to communicate their views and complaints to the cable company, the proper municipal official ~~and~~, the Attorney General and the Public Utilities Commission;

(2) States the responsibility of the Department of the Attorney General and the Public Utilities Commission to receive consumer complaints concerning matters other than channel selection and rates; ~~and~~

(3) States the policy regarding and method by which subscribers may request rebates or pro rata credits as described in subsection 1, paragraph A.; and

(4) Informs subscribers of their right to request basic-tier, nonpremium programming service and the cost of that service.

B. The notice ~~shall~~must be in nontechnical language, understandable by the general public and in a convenient format. On or before January 30th of each year, the franchisee shall certify to the franchising authority, to the Public Utilities Commission and to the Department of the Attorney General that it has distributed the notice during the previous calendar year as required by this section.

**2-A. Notice on subscriber bills; credits and refunds.** Every franchisee shall include on each subscriber bill for service a notice regarding the subscriber's right to a pro rata credit or rebate for interruption of service upon request in accordance with subsection 1. The notice must include a toll-free telephone number and a telephone number accessible by a teletypewriter device or TTY for contacting the franchisee to request the pro rata credit or rebate for service interruption. The notice must be in nontechnical language, understandable by the general public and printed in a prominent location on the bill in boldface type.

**4. Recording subscriber complaints.** Recording subscriber complaints ~~shall~~must be as follows.

A. Every franchisee shall keep a record or log of all written complaints received regarding quality of service, equipment malfunctions, billing procedure, employee attitude and similar matters. These records ~~shall~~must be maintained for a period of 2 years.

B. The record ~~shall~~must contain the following information for each complaint received:

(1) Date, time and nature of the complaint;

(2) Name, address and telephone number of the person complaining;

(3) Investigation of the complaint;

(4) Manner and time of resolution of the complaint;

(5) If the complaint regards equipment malfunction or the quality of reception, a report indicating corrective steps taken, with the nature of the problem stated; and

(6) Consistent with subscriber privacy provisions contained in the Cable Communications Policy Act of 1984, Public Law 98-549, every franchisee shall make the logs or records of complaints available to any authorized agent of any franchising authority having a franchise with that franchisee or any authorized agent of a municipality considering a franchise with that franchisee upon request during normal business hours for on-site review.

**5. Franchises.** All franchises ~~shall~~must be nonexclusive. All franchises ~~shall~~must include provision for access to, and facilities to make use of, one or more local public, educational and governmental access channels subject to the definitions and requirements of the Cable Communications Policy Act of 1984, Public Law 98-549 or related requirements or rules of the Federal Communications Commission. These facilities at a minimum must consist of a transmitting device and an electronic pathway from the designated public, educational and governmental access origination point to the video service provider's location for retransmission to subscribers on the system.

**6. Rights of individuals.** ~~No~~A cable television system operator or video service provider may not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of age, race, religion, sex, physical handicap or country of natural origin.

**6-A. Subscriber privacy.** A cable television system operator or video service provider may not intrude upon the privacy of a subscriber by installing or using any equipment that allows the system operator or provider to observe or to listen to what is occurring in an individual subscriber's household or to monitor the viewing habits of the subscriber without express, prior written consent of the subscriber. A cable television system operator or video service provider may not sell, disclose or otherwise make available, or permit the use of, lists of the names or addresses of its subscribers, or any list or other information that identifies by name or address subscribers or subscriber viewing habits, to any person or agency for any purpose whatsoever without the prior written consent of the subscriber except that the operator or provider may make such lists available to persons performing services for the operator or provider in connection with its operations, such as a billing service, when the availability of such lists is necessary to the performance of such services if, in either case, the persons receiving such lists agree in writing that they will not permit them to be made available to any other party.

**6-B. Late fees.** A cable television system operator or video service provider may not charge a late fee or other penalty or charge for late payment of any bill that exceeds 1.5% per month of the amount due in the bill. If the bill includes separate charges for different levels of service, a late fee or other penalty or charge must be calculated on the total amount overdue for all levels of service and may not be calculated separately for each level of service. A payment is not late under this subsection until at least 30 days after those services to which the late fee applies have been received by the consumer.

**7. Penalty.** A violation of any provision of this section is a violation of ~~the Unfair Trades Practices Act,~~ Title 5, chapter 10.

**8. Filing of franchise agreements.** A cable television company or video service provider shall file with the Secretary of State a copy of each franchise agreement that it makes with a municipality in the State. The Secretary of State shall make the content of each franchise agreement available on its publicly accessible website.

**9. Consumer rights.** The Public Utilities Commission shall establish by rule consumer protection standards to implement the provisions of this section and to supplement the consumer protection standards set forth in federal law in order to protect consumers of cable television and video services. The Attorney General and municipalities have jurisdiction to enforce consumer protection standards adopted by the Public Utilities Commission. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. These rules must include, but are not limited to, standards governing:

A. Notice to consumers of rates and service and programming offerings and any changes to those rates and offerings;

B. Billing and collection practices, customer security deposits, late payment charges and disconnection of service;

- C. Installation, repair and service practices;
- D. Prohibitions against negative option billing;
- E. Protection of consumer privacy;
- F. Resolution of consumer complaints; and
- G. Credit for loss of service.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

### SUMMARY

This bill directs the Public Utilities Commission to adopt a uniform set of consumer protection standards for all cable television and video services and to adopt a model franchise agreement for use by any municipality that chooses to adopt its provisions. It also adds video service providers to certain laws that govern cable television companies.